

IN THE HIGH COURT OF JUSTICE

Case No: CR-2019-001356

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMPANIES COURT (ChD)

IN THE MATTER OF DRAGON PAYMENTS LTD (FORMERLY LONDON BLOCK EXCHANGE LTD)

AND

IN THE MATTER OF THE INSOLVENCY ACT 1986

SQUIRE PATTON BOGGS (UK) LLP

Petitioner

- and -

DRAGON PAYMENTS LTD

Respondent

RESPONDENT'S SKELETON ARGUMENT FOR
THE HEARING ON 31ST JANUARY 2020

*References to **[page numbers]** are to the hearing bundle prepared by P*

Background

1. This is the adjourned hearing of the winding up petition dated 25th February 2019. It is founded on the sum of £9,900 plus interest of £640.90 said to have been due from the Company to P in respect of legal services provided by P, a firm of solicitors.
2. On 20th March 2019, the Company's majority shareholder Jonathan Sandelson paid the sum of £13,000 to P in purported settlement of any sums due to P. He explains in his witness statement that P did not accept this figure in full and final settlement on account of P's costs of advertising the petition [**272-273**].
3. The petition was first heard on 10th April 2019 and was adjourned pending R's claim in the Senior Courts Costs Office ("SCCO") for a determination of whether: a) there was a valid/enforceable retainer between the parties; b) whether P's purported final statute bills had been delivered and c) the assessment of those bills. The matter was thereafter further adjourned until this hearing.

4. By an order dated 6th September 2019, Master Rowley sitting in the SCCO held that a retainer had existed and that P's bills had been delivered. He gave directions for the assessment of the costs [305]. That assessment has not yet taken place. On the basis that it was more appropriate for the SCCO to assess the bill, by N244 Application Notice dated 23rd January 2020 the Company sought to adjourn this hearing.
5. The Company has recently been in a position to take advice from Insolvency Practitioner Paul Cooper of David Rubin and Partners, and has decided that it must enter into an insolvency process. Mr Cooper has given notice to the Company's shareholders and creditors of CVL meetings on 14th February 2020.
6. Mr Cooper has made a witness statement accompanying an application by notice dated 30th January 2020, seeking to adjourn the hearing until 29th April 2020 so that the Company may enter Creditors' Voluntary Liquidation. The Court office was unable to issue the application at around 4pm on 30th January 2020 but the Company seeks to persuade the Court to consider the application and evidence at the hearing.

Submissions

Delay

7. While it is not necessary for a liquidated debt to be established in order to found a winding up petition, it is relevant that the debt in question was in fact unliquidated, being unassessed solicitors fees (Truex v Toll [2009] 1 WLR 2121).
8. P asserts a debt from the Company, but decided to issue a winding up petition rather than a money claim. Any delay from the usual time taken for a winding up petition to be determined which was caused by virtue of the Company's right to have the bill assessed should not therefore lead to criticism of the Company.
9. In his fourth witness statement on behalf of P dated 27th January 2020 Russell Hill makes much play of the fact that it was P, rather than the Company, who took advantage of the direction at paragraph 6 of the Order of Master Rowley dated 6th September 2019 that "*Either party may file a request for a hearing*" of the costs assessment in the SCCO [305]. Given that the entire action rested upon P seeking payment from the Company, it was always likely to be the case that P would be expected to seek the hearing in order to have the costs assessed. The fact that it

waited for nine weeks to do so despite being expressly permitted is, again, not something for which the Company can be blamed.

CVL

10. The Company's previous efforts to improve its prospects have not borne fruit, and the Company accepts that it must now enter an insolvency process. Mr Cooper explains in his witness statement at paragraph 12 why he believes that the process of a CVL would lead to a better recovery for the Company's creditors in comparison with a compulsory order by the Court. In short:

- (a) The costs of a CVL will be lower, achieving a better return to creditors;
- (b) The company has already reached advanced stages of negotiations for the sale of assets;
- (c) The sale of the company's assets will likely be easier without the stigma of a Court-ordered winding up.
- (d) The move to enter a CVL is an instance of the Company director complying with his director's duties.
- (e) CVL is a faster process than compulsory liquidation, not least because, if Mr Cooper is appointed liquidator instead of the Official Receiver, he has already familiarised himself with the Company's business, assets, debtors and creditors.

Supporting creditors

11. Paragraph 19 of the fourth witness statement of Russell Hill alleges the existence of numerous supporting creditors, presumably seeking to bolster the petition in circumstances where P's own asserted debt is not liquidated. However, the positions of the supporting creditors will not be prejudiced if the Company were to enter into a CVL rather than compulsory liquidation.

Adjournment

12. The Company seeks an adjournment to the winding up list on 29th April 2020, effectively 12 weeks. It submits that this is an appropriate period to allow the CVL to be progressed before the Court considers the petition again.

30th January 2020

Varun Zaiwalla